

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Richard D. McCall and Andrew McCall

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AFO- 25

NO. 2010-SW- 25

TO: Richard McCall
1110 S 3rd Ave
Washington, IA 52353

Andrew McCall
1844 Lexington Boulevard
West Chester, IA 52359

I. SUMMARY

This administrative consent order (order) is entered into by Richard McCall and Andrew McCall (collectively referred to as the McCalls) and the Iowa Department of Natural Resources (Department). The McCalls hereby agree to remove all manure from their discontinued animal feeding operation, properly land-apply it and pay an administrative penalty of \$4,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Relating to technical requirements:

Mark Heiderscheit, Field Office #6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459, Subchapter III, and the rules adopted or permits issued pursuant thereto, Iowa Code section 455B.307 which

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authorizes the Director to issue any order necessary to secure compliance with the provisions of Iowa Code chapter 455B, Division IV, Part 1; and Iowa Code section 455B 109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts.

- 1 Richard McCall is the deed holder of the property located at 1844 Lexington Boulevard, West Chester, Iowa, in the SW ¼ of Section 28, T-76-N, R-8-W. Located on this property is a confined animal feeding operation and two manure storage pits. Richard's son, Andrew McCall, is responsible for the day to day operations of this facility.
- 2 On September 18, 2007, the Department received a complaint alleging that several dozen dead hogs were piled up next to the pole barn on the above discussed property and liquid manure had been discharged to a neighboring property, including a water of the state. Upon receipt of this complaint Mark Heiderscheit, an Environmental Specialist with the Department, investigated. Mr. Heiderscheit observed indications of a manure release from one of the confinement buildings located on Richard McCall's property and several dead hogs which had not been disposed of properly. Water samples were taken and sent to the University of Iowa Hygienic Laboratory (UHL) for analysis. The results indicated that the water contained high levels of ammonia.
- 3 On September 20, 2007, a notice of Violation (NOV) was sent to the McCalls via certified mail discussing the above violations and applicable law. This NOV also made recommendations as to how to bring the facility into compliance with the law.
- 4 On October 25, 2007, Mr. Heiderscheit conducted a follow up investigation. Mr. Heiderscheit observed that the manure pit was full and needed to be pumped down.
- 5 On October 30, 2007, the UHL sample results were mailed to the McCalls. The results showed that the manure release caused pollution to a water of the state. This letter also reminded the McCalls to submit information to the Department regarding the number of confinement buildings and their animal capacity.
- 6 On December 4, 2007, a NOV was sent to the McCalls regarding failure to take the necessary corrective action following the September 18, 2007, complaint. The following information still needed to be submitted to the Department:
 1. number of confinement buildings;
 2. year when each confinement building was constructed;
 3. production phase for each confinement building;
 4. type of manure storage; and
 5. total animal capacity for each confinement building.

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Further, the Department stated that the McCalls needed to notify the Department if the facility had been discontinued; otherwise all the necessary information must be submitted to the Department by December 21, 2007.

7 On December 17, 2007, the McCalls submitted a letter to the Department which contained the requested information. This letter also stated that use of the facility was discontinued on October 20, 2007.

8 On December 20, 2007, the Department sent the McCalls a letter informing them that 567 IAC 65.2(8) required that all manure from a discontinued animal feeding operation and its associated manure control facilities be removed and land applied as soon as practical but not later than six months after discontinuing the operation. Therefore, this must be done by April 20, 2008. The Department also asked the McCalls to notify the field office once closure was completed.

9 On April 8, 2008, Andrew McCall sent a letter to the Department requesting a seven month extension to complete closure of his manure control facilities. In this letter he stated that because of the cold winter he was unable to clean the pits. He requested the date to be extended until November 20, 2008, so that he could clean them out over the summer and fall.

10 On April 17, 2008, Mr. Heiderscheit and Ryan Stouder, an Environmental Specialist with the Department, conducted a site visit of the McCalls' facility. On site they observed manure in both manure pits and that manure covered the floor of the north confinement building. On April 17, 2008, the Department sent a letter to the McCalls detailing the Department's site visit and denying the McCalls' extension request.

11 On September 4, 2008, a NOV was sent to the McCalls via certified mail for failure to remove manure within six months of discontinuing an animal feeding operation and failure to take necessary remedial actions. This letter set out that on September 3, 2008, Mr. Heiderscheit conducted a follow up investigation at the site and observed that one of the confinement buildings had been power washed and the other was in the process of being washed. However, the manure had not been removed from the pits as required by law. This letter reminded the McCalls that the manure should have been removed by April 20, 2008. However, the Department extended the deadline until December 5, 2008, but indicated that the matter may be referred for further enforcement.

12 On December 10, 2008, Mr. Heiderscheit and Mr. Stouder, conducted a follow up investigation. On site they observed that both confinement buildings had been power washed but the manure pits still needed to be pumped down and manure was stockpiled in the corner of the north confinement building.

13 On December 12, 2008, a NOV was sent to the McCalls for failure to remove manure within six months of discontinuing an animal feeding operation.

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14. On May 12, 2009, Mr. Heiderscheid contacted Andrew McCall who stated that the manure pits had not been cleaned out. On that same day Mr. Heiderscheid spoke with Richard McCall and informed him that it is the landowner's responsibility to clean out the manure pits.
15. On May 12, 2009, Mr. Heiderscheid conducted a follow up investigation to determine if the pits had been cleaned out. He concluded that the status of the pits was the same as the last inspection.
16. On May 12, 2009, a NOV was sent to the McCalls for failure to remove manure within six months of discontinuing an animal feeding operation, failure to implement minimum manure control requirements and failure to take necessary remedial actions.
17. On June 4, 2009, the Department sent a letter to the McCalls reminding them to submit a letter documenting removal of the stockpiled manure.
18. On June 9, 2009, Mr. Heiderscheid spoke to Andrew McCall by phone. Andrew McCall stated that the smaller manure pit had been pumped down so that only a couple inches of manure remained and that he was in the process of modifying the larger manure pit so that it may be emptied. Andrew McCall indicated that the manure pits should be emptied in the next few weeks.
19. On July 20, 2009, Mr. Heiderscheid conducted a follow up investigation. He concluded that the manure had not been removed from the pits.
20. On October 16, 2009, Mr. Heiderscheid contacted Andrew McCall to determine the status of the manure removal. Andrew McCall informed Mr. Heiderscheid that he was in the process of harvesting beans and wanted to complete that before removing any more manure. That day Mr. Heiderscheid went on site to investigate and concluded that manure was still in the pits.
21. On December 31, 2009, Mr. Heiderscheid contacted Andrew McCall to determine the status of the manure removal. Andrew McCall informed Mr. Heiderscheid that he had pumped 1/3 of the larger manure pit and then encountered problems with the jets on the pump becoming clogged with manure solids. He also discussed an issue he had with his manure spreader plugging up during application due to the solids. However, Andrew McCall indicated that he would continue to work on emptying the pit through the spring. That same day Mr. Heiderscheid went on site to investigate, he observed that little had changed since his last visit.
22. On January 4, 2010, the McCalls were sent an NOV for failure to remove manure within six months of discontinuing an animal feeding operation and failure to take necessary remedial actions. This letter also informed them that they were being referred to the Department's Legal Services Bureau for enforcement.

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IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law are applicable to this matter.

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.
2. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.
3. 567 IAC 65.2(8) states as soon as practical but no later than six months after the use of an animal feeding operation is discontinued, all manure shall be removed from the discontinued animal feeding operation and its manure control facilities and be land applied. The McCalls notified the Department that as of October 20, 2007, the facility had been depopulated. As of January, 2010, observations indicated that the manure had not been removed from the manure storage structure. The above-facts disclose a violation of this provision.
4. 567 IAC 65.5(2)"b" states that if the Department's evaluation determines that manure from an animal-feeding operation is causing or may reasonably be expected to cause pollution of a water of the state or a violation of the state water quality standards, the operation shall institute necessary remedial actions to eliminate the condition if the operation receives a written notification from the Department of the need to correct the condition. The McCalls received numerous NOVs requiring the manure to be removed from the manure storage pits. As of January, 2010, the manure had not been removed. The above-facts disclose a violation of this provision.
5. Iowa Code section 459.311 and 567 IAC 65.2(3) require, in part, that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced by the operation between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state. On September 18, 2007, Mr. Heiderscheit documented that manure was released from one of the McCalls' confinement buildings and it reached a water of the state. Therefore, the above stated facts demonstrate noncompliance with this provision.
6. 567 IAC 100.4(2) states that "dead animals are [to be] buried in soils listed in tables contained in the county soil surveys and soil interpretation records as being moderately well drained, well drained, somewhat excessively drained, or excessively drained soils." The McCalls failed to bury the dead hogs; therefore, the above-facts disclose violations of this provision.

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7. 567 IAC 105 6(6) states that
[d]ead farm animals shall be incorporated into the composting process within 24 hours of death. An adequate base layer (from 12 to 24 inches thick, depending on the size and number of dead farm animals) with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover material shall be maintained around carcasses at all times to control mortality leachate and odors and to prevent access by scavenging domestic and wild animals

The above stated facts show non-compliance with this provision

8. Iowa Code section 455B.186 and 567 IAC 62.1(1) state that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. On September 18, 2007, Mr. Heiderscheit documented that water containing manure was released from one of the McCalls' confinement buildings and reached a water of the state. Therefore, the above stated facts show noncompliance with this provision

V. ORDER

THEREFORE, the Department orders and the McCalls agree to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Immediately remove all manure from all structures located at 1844 Lexington Boulevard, West Chester Iowa, and properly land-apply it; and
2. Pay a penalty of \$4,000.00 within 30 days of the date the Director of the Department signs this order. Richard McCall and Andrew McCall hereby agree to be jointly and severally liable for the payment of this penalty.

VI. PENALTY

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. Iowa Code section 455B.191 provides for civil penalties of up to \$5,000.00 per day for water quality violations and Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. The administrative penalty assessed by this administrative consent order is \$4,000.00. The administrative penalty is determined in accordance with the following:

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Economic Benefit – The McCalls saved time and money by failing to remove manure from manure storage structures in accordance with state law. In addition, they failed to follow disposal requirements in the burial of dead hogs. Nevertheless, at this time the Department has decided not to assess a penalty for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. The manure pits and confinement buildings contain manure which has the potential to be released into the environment. The Department has expended a large amount of staff time in an effort to work with the McCalls properly close the facility. Improper disposal of solid waste can release toxins which pose a risk to human health and the environment. The continuous refusal to properly close the facility threatens the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Further an actual discharge to a water of the state was documented. Therefore, \$2,000.00 is assessed for this factor.

Culpability – The McCalls have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. The Department has provided ample time for the McCalls to properly remove the manure from the facility. The rules allow a six month time frame from the last date there are animals at the facility to remove the manure. The facility has been empty since at least October 2007. The McCalls' continuous failure to remove the manure and properly close the facility demonstrates a blatant disregard for the rules of the state and the environment. In addition the documented discharge to a water of the state and the improper burial of hogs combined show a disregard for environmental laws. Therefore, \$2,000.00 should be assessed for these violations.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.175 and 455B.308, and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the McCalls. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 455B.307. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

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Richard McCall
Richard McCall

Dated this 18 day of
May, 2010

Andrew McCall
Andrew McCall

Dated this 19 day of
May, 2010

Richard A. Leopold
Richard A. Leopold, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20 day of
May, 2010

Field Office 6; Carrie Schoenebaum; Mark Heiderscheit; VI C; VII C.1, VIII D.2 c